

**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND  
REGULATORY SERVICES MANAGER**

**TO: BARROWFORD AND WESTERN PARISHES COMMITTEE**

**DATE: 1<sup>ST</sup> FEBRUARY 2023**

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## **PLANNING APPLICATIONS**

### **PURPOSE OF REPORT**

To determine the attached planning applications.

## REPORT TO BARROWFORD & WESTERN PARISHES COMMITTEE 1<sup>ST</sup> FEBRUARY 2023

**Application Ref:** 22/0372/FUL  
**Proposal:** Full: Demolition of existing garages and erection of seven dwellings  
**At:** Garage Site South West of 28-54 Hamilton Road, Barrowford  
**On behalf of:** Mr Z Ali  
**Date Registered:** 13/09/2022  
**Expiry Date:** 08/11/2022  
**Case Officer:** Neil Watson

This application was deferred from the January 2023 Committee meeting in order to allow the applicant to submit further information regarding ground conditions.

### **Site Description and Proposal**

The application site is a plot of land located between Hamilton Road, Carr Hall Drive, Fife Street and Richmond Road. It currently accommodates approximately 30 garages, most of which are dilapidated and in a poor state of repair. The application site is located within a Conservation Area and there are a number of protected trees on the site.

The proposal is for the erection of seven two storey dwellings. They are to be arranged in a terraced formation, running parallel to the existing properties on Hamilton Road and Fife Street. The properties are to comprise three bedrooms. The dwellings are to be constructed of stone with slate roofs.

### **Relevant Planning History**

None relevant.

### **Consultee Response**

#### LCC Highways

The amended plans BH Town Planning 'Proposed site layout' D15-A3/002 Rev A and Secure cycle store specification have been reviewed.

The amendments listed below have been made in accordance with the previous comments.

These amendments are acceptable.

1. The front gardens of plots 3-9 have been removed which results in a wider parking area and aisle.
2. The boundary adjacent to the back street between the site and Fife Street has been amended to tie into the adopted highway.
3. The parking for plots 1 and 2 has been enlarged.
4. Secure cycle parking and EV charging points are included on all dwellings.

There is no objection to the proposal subject to the following conditions:

1. No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:
  - i) The parking of vehicles of site operatives and visitors
  - ii) The loading and unloading of plant and materials

- iii) The storage of plant and materials used in constructing the development
  - iv) The erection and maintenance of security hoarding
  - v) Wheel washing facilities
  - vi) Measures to control the emission of dust and dirt during construction
  - vii) A scheme for recycling/disposing of waste resulting from demolition and construction works
  - viii) Details of working hours
  - ix) Routing of delivery vehicles to/from site
2. Within 3 months of commencement a scheme for the site access and off-site highway works shall be submitted to and approved by the Local Planning Authority. The works shall include the following and be implemented prior to the first occupation of any dwelling.
- a. Hamilton Road brought up to adoptable standards
  - b. New dropped crossing on Richmond Road.
3. No development shall take place (including investigation work, demolition, siting of site compound/welfare facilities) until a survey of the condition of Hamilton Road along the frontage of the site has been submitted to and approved in writing by the Local Planning Authority. The extent of the area to be surveyed must be agreed by the Highways Authority prior to the survey being undertaken. The survey must consist of:
- A plan to a scale of 1:1000 showing the location of all defects identified;
  - A written and photographic record of all defects with corresponding location references accompanied by a description of the extent of the assessed area and a record of the date, time and weather conditions at the time of the survey.
- No building or use hereby permitted shall be occupied or the use commenced until any damage has been made good to the satisfaction of the Highway Authority.
4. Prior to the occupation of each dwelling the driveways and parking areas shall be constructed in a bound porous material and made available for use and maintained for that purpose for as long as the development is occupied.
5. Prior to first occupation each dwelling shall have a secure cycle store for at least 2 cycles.
6. Prior to the first occupation each dwelling shall have an electric vehicle charging point. Charge points must have a minimum power rating output of 7kW, be fitted with a universal socket that can charge all types of electric vehicle currently.

#### Notes

The grant of planning permission will require the applicant to enter into a S278 Agreement, with the County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the work by contract and supervision of the works. The applicant should be advised to contact Lancashire County Council for further information by emailing the Highway Development Control Section at [developeras@lancashire.gov.uk](mailto:developeras@lancashire.gov.uk)

#### Barrowford Parish Council

##### Objection

The Council's areas of concern are:

The proposed development is of a low quality design which does not reflect the local vernacular design of the adjacent terraces in both window and door openings and potentially materials. The adjacent terraces are identified in the Conservation Statement as making a "positive contribution" to the character of the Conservation Area, and although described as of plain flat fronted design in the application, the local design has a sense of presence enhanced by the use of dressed stone Jambs and Lintels and Sills. The submitted designs do not reflect the local vernacular and would detract from the character, setting and amenity of the Carr Hall Conservation Area.

The Use of natural stone and slates and design emphasis which matches the existing stone and slates and design emphasis which matches the existing terraces in concept is paramount to enhancing both the setting and amenity of the Conservation Area.

The Council has concerns regarding the removal of TPO and non TPO trees from the site which are highlighted in the arboricultural report as being predominantly of medium to low grade and possibly suitable for removal but the Parish Council feels that without any agreed scheme for replacement then this should be considered and a satisfactory solution is made before a decision is made.

Concerns were raised by local residents in relation to localised flooding problems both Fife Street and Hamilton Road with water pooling beneath the wood floors on some dwellings, this is probably attributable to how surface water and existing water courses were addressed and the land was initially developed for housing and the removal of the lakes and parkland associated with the Carr Hall estate. The Council would like to see investigation of the drainage systems within this area and if any culverts or land drains cross the proposed development site.

#### Unites Utilities

Recommended conditions relating to surface water investigations.

#### Lancashire Fire Safety

The buildings must conform to Document B Part B5 of building regulations.

#### Environmental Health

Concerns raised around nuisance during the construction phase. A Construction Method Statement condition is requested.

#### Cadent Gas

The proposed development is within close proximity to a low and medium pressure asset.

### **Public Response**

Nearest neighbours notified, a site & press notice have been displayed. Multiple objections have been received, raising the following issues:

- Traffic and highway safety grounds
- Protected bats in the existing garages
- Impact upon Conservation Area
- Removal of protected trees
- This site would set a dangerous precedent
- A soil test is required
- The communal gardens may be taken into private ownership over time
- Where would the trees be planted off site?
- The area is liable to flooding, many cellars on Hamilton Road already experience flooding
- The properties on Fife Street are too close to the proposed dwellings
- Hamilton Road is unadopted
- Concerns that not all residents in the area were informed of the plans
- Nowhere to charge electric vehicles
- Where would the wheelie bins be collected from?
- Concerns regarding land ownership of a strip of land on Hamilton Road
- We already have the Keld housing estate around the corner, no further houses are needed
- Problems for emergency services accessing the area
- The plans would not meet building regulations and would restrict light to nearby properties

- Concerns regarding allegations which the applicant has made about knowing the Leader of the Council personally
- There are a number of rare moths in the area
- Disruption during construction phase would be a major problem for existing residents, this could impact mental health

Some letters of support have also been received, raising the following points:

- 13 trees are proposed for removal but only 4 of these are TPO
- There is no evidence of bats on this site
- 18 off-street car parking spaces are to be provided
- The application site is within Flood Zone 1, low risk of flooding
- The site will be improved if this proposal is successful, the site is currently very dilapidated
- People are parking on Hamilton Road illegally – no one has a right to park there
- Some of the local residents owe money to the owner for rental of the garages

## **Officer Comments**

### **Policy**

Policy SDP1 (Presumption in Favour of Sustainable Development) takes a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

Policy SDP3 (Housing Distribution) sets out the location of new housing in the Borough in conjunction with SDP2 and LIV1.

Policy ENV2 (Achieving Quality in Design and Conservation) identifies the need to protect and enhance the heritage and character of the Borough and quality of life for its residents by encouraging high standards of quality and design in new development. It states that siting and design should be in scale and harmony with its surroundings.

Policy ENV4 (Promoting Sustainable Travel) seeks to promote sustainable travel as well as development impacts and accessibility and travel plans for major developments to mitigate any negative impacts.

Policy ENV5 (Pollution and Unstable Land) concerns the risks of air, water, noise, odour and light pollution in addition to addressing the risks arising from contaminated land.

Policy ENV7 (Water Management) concerns the risk of flooding from flood or surface water. It requires flood risk to be assessed and sustainable drainage measures to be used.

Policy LIV1 (Housing Provision and Delivery) sets out the requirement for housing to be delivered over the plan period. This policy allows for non-allocated sites within the Settlement Boundary as well as sustainable sites outside but close to a Settlement Boundary.

Policy LIV3 (Housing Needs) encourages the support and provision of a range of residential accommodation.

Policy LIV4 (Affordable Housing) sets out the targets and thresholds to contribute towards the provision of affordable housing. Where the relevant target cannot be met a financial viability assessment should be provided to allow for negotiation and adjustment accordingly.

Policy LIV5 (Designing Better Places to Live) requires all new housing to be designed and built in a sustainable way. New development should make the most efficient use of land and be built at a density appropriate to its location taking account of townscape and landscape character. Provision for open space and/or green infrastructure should be made in all new housing developments.

### Replacement Pendle Local Plan

Saved Policy 31 sets out the parking standards for development.

### National Planning Policy Framework

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that there are three dimensions to sustainable development: economic, social and environmental. The policies of the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

The Design Principles Supplementary Planning Document (SPD) applies to extensions and sets out the aspects required for good design.

### Barrowford Neighbourhood Plan

The Neighbourhood Plan has a policy in it relating to new housing (BNDP01). It requires new housing development to be in conformity with the Core Strategy and to be of high quality design, would not have an unacceptable impact upon residential amenity, would not lead to over-development of residential gardens and are appropriate to the surrounding local context.

### **Principle of Development**

The application site is located within the settlement boundary and as such the principle of development is acceptable in accordance with Policy SDP2, subject to compliance with design, heritage and amenity policies.

### **Design & Heritage**

The proposed development comprises seven two storey terraced dwellings. The proposed dwellings are to be similar in scale and density to the existing properties on Fife Street and Hamilton Road. The design of the properties which has been put forward is a simple form, to be constructed of stone with slate roofs. They have detailing including stone heads and cills to the windows as well as chimneys to the roofs. The dwellings are all to have two car parking spaces to the front, with a small rear yard and space to store refuse bins. There is an area of communal land to the east and west of the site, which is to allow for the retention of some of the trees within the site as well as a landscaping scheme to provide mitigation. As such the proposed development complements the character and appearance of the Conservation Area and accords with Policy ENV1 in this regard.

In terms of the impact upon the Conservation Area, a balancing exercise must be undertaken in accordance with paragraph 202 of the Framework. In this case, although the loss of some TPO trees would lead to less than substantial harm to the Conservation Area, this would be outweighed by the public benefit of the contribution to the housing land supply. There would also be benefits to the local economy through the construction phase and as a result of additional residents spending in the area. As such, the public benefits outweighs the harm caused to the heritage asset and the proposal accords with paragraph 202 of the Framework and policy ENV1 of the Local Plan.

The design and materials of this development are acceptable in this location and as such comply with Policies ENV1, ENV2 and the Design Principles SPD.

### **Residential Amenity**

The Design Principles SPD advises that proposed dwelling should be sited so that any habitable room windows are at least 21m from neighbouring habitable room windows. In terms of privacy the dwellings have been positioned so that they are 21m from the front of the properties on Hamilton Road. To the Fife Street elevation, the rear of the proposed dwellings is just 14m from habitable room windows of the existing dwellings on Fife Street. However, the dwellings have been designed with a roof light window serving one of the bedrooms and an obscure glazed window serving another bedroom. The obscurely glazed window can be controlled by condition. As such, there would be no unacceptable neighbouring amenity issue.

There are no side elevation windows to the proposed properties at either end of the terrace. There would be no unacceptable neighbouring amenity issue in this regard. As such, the proposals accord with Policy ENV2 of the Local Plan Part 1: Core Strategy or with paragraph 130 of the Framework in this regard.

### **Highways**

The proposed development provides an adequate level of off-street parking, in accordance with Policy 31 of the Replacement Pendle Local Plan. Although some of the surrounding roads are unadopted, this is a matter for the County Council in terms of potential future adoption. It is not a material planning consideration in this case. The condition which has been requested in relation to a photographic record of Hamilton Road is not enforceable or reasonable, so it should not be included in any decision notice. Subject to the other conditions, the proposed development is acceptable in highway safety terms.

### **Ecology & Trees**

The proposed development would result in the loss of nine trees in total, one of which would have to be removed even if the proposed development had not been planned. The communal space to either end of the application site would provide sufficient to plant replacement trees to compensate for the loss of the trees which are to be removed as part of the proposals.

Although the loss of trees would weigh negatively in the planning balance due to the loss of habitat, it would be outweighed by the public benefit which would result from the increase in housing land supply. It is also possible to mitigate this loss through the introduction of a replacement planting scheme, this could be controlled by condition. Therefore, the proposed development does not conflict with Policy ENV1 of the Local Plan: Part 1 Core Strategy.

The pertinent part of the Arboricultural Method Statement (AMS) is the section on 'Demolition' and the use of ground protection boards during this process. The next phase after demolition is the erection of Tree Protective Fencing, prior to any engineering machinery or works on the site. Also key is the section on 'engineering works' in close proximity to T10, this specifically points out the use of a 'cellular confinement system' within the RPA. The AMS also mentions a pre-commencement site visit which the council's Tree Officer is happy to assist with. These operations are important to the safeguarding of the trees. A condition can be attached to ensure that all works are carried out in accordance with the method set out in the AMS.

The application is accompanied by an arboricultural impact assessment and an ecology survey. Neither of these reports raise serious concerns about the proposed development. Although some

residents have suggested that bats are using the area, there is no evidence that they are present within the trees on site. As such, this is not a matter which would prevent development in this case.

## **Other Matters**

Some local residents have expressed concerns about an existing issue with ground water flooding. The proposed development is located within Flood Zone 1, which is the lowest risk of flooding from rivers and the sea. United Utilities have requested that a condition is placed on any planning permission which would require infiltration testing to follow the hierarchy set out in the NPPF regarding the disposal of surface water. This could be secured by planning condition. Further, it would not be for a proposed development to mitigate an existing issue. Concerns regarding the construction phase has been raised, given the proximity to neighbouring properties. This is something which could be controlled by a Construction Method Statement planning condition. The other matters which have been raised are not material planning considerations and are therefore not determinative in this application.

The application was deferred in order to consider further if there is any ground instability in the area. Planning applications are not accompanied by land stability reports unless there is some known issue relating to a site that would specifically require a report. The applicant has had a report commissioned from the Coal Authority. That confirms that there are no mine workings in the area. Building Control are not aware of any abnormal ground conditions in the area nor is there any source of information that indicates the ground is made up or has some underlying problem. The houses surrounding do not suffer from any subsidence issues.

In the absence of any data that suggests there is any issue with ground stability the construction of the houses and ensuring the foundations are stable would be dealt with as they normally are via the Building Regulations.

## **Summary**

The proposed development comprises a total of seven dwellings, arranged in a row of terraced properties. The design of the properties is acceptable and the proposed dwellings would not result in any unacceptable impact upon residential amenity for the existing residents or future users. This conforms with paragraph 130 of the Framework and Policy ENV2 of the Local Plan: Part 1 Core Strategy.

## **Reason for Decision**

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The garden extension would be acceptable in this location subject to appropriate conditions. The development therefore complies with the development plan. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

## **RECOMMENDATION: Approve**

Subject to the following conditions:

1. The proposed development hereby permitted shall be begun before the expiration of three years from the date of this permission.



**Reason:** Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan D15 A3/001, Proposed Floor Plans D15 A3/003 Rev B, Elevation Plans D15 A3/004 Rev B, Proposed Section Plans D15 A3/005 Rev B.

**Reason:** For the avoidance of doubt and in the interests of proper planning.

3. Samples of materials including descriptions, name of source/quarry shall be submitted to the Local Planning Authority for written approval prior to commencement of work on the site. The development shall be carried out using only the agreed materials.

**Reason:** In order that the Local Planning Authority can assess the materials in the interest of the visual amenity of the area.

4. Prior to commencement of works on site, a foul and surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority and has been fully installed and completed in accordance with the approved details.

The drainage scheme must include:

- (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
- (ii) A restricted rate of discharge of surface water agreed with the Local Planning Authority (if it is agreed that infiltration is discounted by the investigations); and
- (iii) A timetable for its implementation.
- (iv) Details of how foul and surface water will be disposed of.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

The development hereby permitted shall be carried out only in accordance with the approved drainage scheme.

**Reason:** To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution.

5. All windows shall be set back from the external face of the walls by a minimum of 70mm.

**Reason:** To ensure a satisfactory appearance to the development in the interest of visual amenity.

6. The development hereby permitted shall not be commenced until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be submitted at a scale of 1:200 and shall include the following:
  - a. the exact location and species of all existing trees and other planting to be retained;
  - b. all proposals for new planting including the replacement trees for those which have been removed, and turfing indicating the location, arrangement, species, sizes, specifications, numbers and planting densities;
  - c. an outline specification for ground preparation;

- d. all proposed boundary treatments with supporting elevations and construction details;
- e. all proposed hard landscape elements and pavings, including layout, materials and colours;
- f. the proposed arrangements and specifications for initial establishment maintenance and long-term maintenance of all planted and/or turfed areas.

The approved scheme shall be implemented in its entirety approved form within the first planting season following the substantial completion of the development. Any tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

**Reason:** To ensure that the development is adequately landscaped so as to integrate with its surroundings.

7. No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:
- i) The parking of vehicles of site operatives and visitors
  - ii) The loading and unloading of plant and materials
  - iii) The storage of plant and materials used in constructing the development
  - iv) The erection and maintenance of security hoarding
  - v) Wheel washing facilities
  - vi) Measures to control the emission of dust and dirt during construction
  - vii) A scheme for recycling/disposing of waste resulting from demolition and construction works
  - viii) Details of working hours
  - ix) Routing of delivery vehicles to/from site

**Reason:** In the interests of highway safety.

8. Within 3 months of commencement a scheme for the site access and off-site highway works shall be submitted to and approved by the Local Planning Authority. The works shall include the following and be implemented prior to the first occupation of any dwelling.
- a. Hamilton Road brought up to adoptable standards
  - b. New dropped crossing on Richmond Road.

**Reason:** In the interests of highway safety.

9. Prior to the occupation of each dwelling the driveways and parking areas shall be constructed in a bound porous material and made available for use and maintained for that purpose for as long as the development is occupied.

**Reason:** In the interests of highway safety.

10. Prior to first occupation each dwelling shall have a secure cycle store for at least 2 cycles.

**Reason:** In order to promote sustainable travel modes.

11. Prior to the first occupation each dwelling shall have an electric vehicle charging point. Charge points must have a minimum power rating output of 7kW, be fitted with a universal socket that can charge all types of electric vehicle currently.

**Reason:** In order to promote sustainable travel modes.

12. The development hereby approved shall be carried out in accordance with the survey details for trees, prepared by Cheshire Woodlands CW/10642-AS-1, dated 30 May 2022 (Revised 12/12/2022).

**Reason:** To ensure the trees are adequately protected.

13. The first floor rear elevation windows, closest to Fife Street (serving the bedroom) of the development hereby permitted shall at all times be fitted with obscure glazing to at least level 4 or above unless otherwise agreed in writing by the Local Planning Authority. Any replacement glazing shall be of an equal degree or above. The window shall be hung in such a way as to prevent the effect of the obscure glazing being negated by way of opening.

**Reason:** To ensure an adequate level of privacy to adjacent residential properties.

14. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order, 2015 (or any other order revoking or modifying that Order) the development hereby permitted shall not at any time have any additional windows, doors, dormers or other openings inserted to the elevation closest to Fife Street, unless with the prior written consent of the Local Planning Authority as to the location, size, design and degree of obscurity of the glazing in the new opening and any window thereafter installed shall at all times comply with the details approved.

**Reason:** To safeguard residential amenity.

15. The development hereby approved shall be carried out in strict accordance with the Preliminary Ecological Appraisal and Preliminary Roost Assessment, received on 13/09/2022.

**Reason:** In order to adequately safeguard protected species.

**Application Ref:** 22/0372/FUL

**Proposal:** Full: Demolition of existing garages and erection of seven dwellings

**At:** Garage Site South West of 28-54 Hamilton Road, Barrowford

**On behalf of:** Mr Z Ali

## REPORT TO BARROWFORD & WESTERN PARISHES COMMITTEE 1ST FEBRUARY 2022

**Application Ref**      **22/0747/CEU**

**Proposal:**              Certificate of Lawfulness (S. 191 existing use): Existing use of land as garden and domestic curtilage and erection of a greenhouse.

**At:**                        Hollin Hall Farm, 517 Gisburn Road, Blacko

**On behalf of:**        Mr Daniel Hall

**Date Registered:**    02/11/2022

**Expiry Date:**         29/12/2022

**Case Officer:**        Alex Cameron

This application has been brought before Committee due to the number of objections received.

### **Site Description and Proposal**

The application site is a Grade 2 listed detached dwelling located within the settlement of Blacko.

This application for a Certificate of Lawfulness to demonstrate the lawfulness of the existing use of the land to the rear as a domestic garden and erection of a greenhouse.

### **Relevant Planning History**

PLE/09/0116 – Alleged unauthorised use of agricultural land as domestic garden. Case closed

13/09/0307P - Change of use of agricultural land to form garden. Refused and appeal dismissed

PLE/16/0064 – Alleged unauthorised change of use from field to domestic garden and erection of greenhouse. Case closed

### **Consultee Response**

LCC Highways – No objection.

Blacko Parish Council – The appeal refusal was never enforced by Pendle Planning although we as a Parish Council have mentioned to on numerous applications since.

An application 16/0603/OUT for 12 houses shows the intention on the part of the applicant to develop the site rather than use it as private garden and the ten year period should run from this time as it was the last formal time that the use of the land was considered.

Object to this Certificate of Lawfulness being passed.

### **Public Comments**

Responses received objecting on the following grounds:

- The unauthorised use of the land should not have been allowed to continue after the appeal was dismissed in 2009
- Could lead to future housing development on the land

- The boundaries are untended and overgrown
- Potential damage to neighbouring properties and drainage pipes from tree roots
- Impact on views from neighbouring properties
- Loss of value of neighbouring properties

## **Officer Comments**

### **Lawfulness of the use**

In 2009 a retrospective application was made for the change of use of the land to form a domestic garden, that application was refused and an appeal against that decision dismissed.

The grounds for refusal were that the size and projection of the garden beyond the line of existing gardens and outside of the settlement boundary was not in accordance Policy 1 of the Replacement Pendle Local Plan (RPLP) and guidance in the Development in the Open Countryside SPG.

Evidence has been provided in the form of photographs and statutory declarations that following the dismissal of the appeal the land continued to be used as a domestic garden.

There was a second enforcement investigation in 2016 relating to the garden and erection of the greenhouse. The publication of the National Planning Policy Framework in 2012 made Policy 1 of the RPLP out of date and altered consideration in relation to development outside of but adjacent to settlement boundaries. It was determined that, although unauthorised, there was no planning harm and the case was closed.

Therefore both from the evidence supplied by the applicant and of previous enforcement instigations it is clear that the land has been in use as a domestic garden incidental to the dwelling for over 10 year. As such the use is now immune from enforcement action and therefore lawful.

### **Extent of the curtilage**

It has been established above that the domestic use of the land (use class C3) is lawful, however, it does not automatically follow that it is now part of the curtilage of the dwelling for the purposes of permitted development rights granted by the General Permitted Development Order GPDO.

To form part of the 'curtilage' of the dwelling the land must share both a spatial and functional relationship with the dwelling. For example a parcel of land that is part of the garden of a property but is fenced, walled or otherwise separated off from the curtilage may not be part of the curtilage of the dwelling for the purposes of permitted development rights. The judgement in relation to that spatial and functional relationship is a matter of fact and degree.

The land is partially separated from the original garden by a retaining wall, however it opens up into the land on the west side and there is clearly both a spatial and functional relationship between the land and the original curtilage. The land to the east is partially separated by a hedge and is set off to the side (to the rear of No. 511) but has a clear functional and spatial connection. Therefore the land is part of the curtilage for the purposes of the GPDO.

### **Lawfulness of the greenhouse**

At the time of its erection in 2016 the use of the land would not yet have been lawful due to the 10 year rule and therefore the greenhouse could not have been erected under permitted development rights. However, the erection of a building it is immune from enforcement after 4 years. As we

have clear evidence that it has been in place since at least 2016 the greenhouse is now immune from enforcement action and therefore lawful.

### Other issues

A number of concerns have been raised in relation to the garden relating to the past appeal and lack of enforcement action, impacts of neighbouring properties and the possibility of future housing development.

These are not material considerations in deterring this application, this is purely a determination of the lawfulness of the existing garden and greenhouse.

The Parish Council state that the 10 year enforcement immunity period should be taken from 2016 as that was the last time the use of the land was formally considered. This is not correct, the period runs from when the use was commenced. The applicant has provided sufficient evidence to demonstrate on the balance of probabilities that the use has been continuous since 2009, there is no evidence available which casts doubt on that.

### **Reason for Decision**

On the basis of the submitted information on the balance of probabilities the domestic use of the land incidental to the dwellinghouse has been continuous for ten or more years and the greenhouse was erected four or more years ago, the domestic use of the land and the greenhouse are therefore lawful by virtue of Section 191(2) of the Town and Country Planning Act 1990 and the land forms part of the curtilage for the purposes of the General Permitted Development Order 2015.

### **RECOMMENDATION: Approve**

|                        |  |
|------------------------|--|
| <b>Application Ref</b> | <b>22/0747/CEU</b>   |
| <b>Proposal:</b>       | Certificate of Lawfulness (S. 191 existing use): Existing use of land as garden and domestic curtilage and erection of a greenhouse. |
| <b>At:</b>             | Hollin Hall Farm, 517 Gisburn Road, Blacko   |
| <b>On behalf of:</b>   | Mr Daniel Hall   |

## REPORT TO BARROWFORD & WESTERN PARISHES COMMITTEE 1ST FEBRUARY 2022

**Application Ref:** 22/0784/CND

**Proposal:** Approval of Details Reserved by Condition: Discharge of Conditions: Condition 3 (External Materials), Condition 4 (Surface Water), Condition 5 (Window set back), Condition 6 (Contamination), Condition 9 (Cycle facilities), Condition 12 (Electric car charging points), Condition 13 (Construction Method Statement) of Planning Permission 21/0154/FUL.

**At:** Land adjacent to 30 Dixon Street, Barrowford

**On behalf of:** MFH Projects

**Date Registered:** 16/11/2022

**Expiry Date:** 11/01/2023

**Case Officer:** Laura Barnes

### **Site Description and Proposal**

This application is made under article 21 of the Town and Country Planning (General Development Procedure) Order 2015 to seek confirmation of compliance with conditions on planning permission 21/0154/FUL.

This application requests the discharge of condition numbers 3, 4, 5, 6, 9, 12 and 13 on the Planning Permission. This condition is listed below:

#### **Condition 3**

No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

#### **Condition 4**

The dwelling shall not be occupied unless and until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority and has been fully installed and completed in accordance with the approved details.

The drainage scheme must include:

i. An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof).

This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water.

ii. A restricted rate of discharge of surface water agreed with the Local Planning Authority (if it is agreed that infiltration is discounted by the investigations).

iii. A timetable for its implementation.

iv. Details of how foul and surface water will be disposed of.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. The scheme hereby approved shall be carried out only in accordance with the approved drainage

scheme.

### **Condition 5**

All windows shall be set back from the external face of the walls by a minimum of 70mm.

### **Condition 6**

Prior to the commencement of development, the applicant shall have submitted to and have agreed in writing by the Local Planning Authority, a method statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination which may be present on site.

The method statement shall detail how:-

- i. an investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the local planning authority; and
- ii. A comprehensive remediation scheme which shall include an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination) will be submitted to and approved in writing by the Local Planning Authority.

All agreed remediation measures shall thereafter be carried out in accordance with the approved implementation timetable under the supervision of a geotechnical professional and shall be completed in full accordance with the agreed measures and timings, unless otherwise agreed in writing by the Local Planning Authority.

In addition, prior to commencing construction of any building, the developer shall first submit to and obtain written approval from the Local Planning Authority, a report to confirm that all the agreed remediation measures have been carried out fully in accordance with the agreed details, providing results of the verification programme of post-remediation sampling and monitoring and including future monitoring proposals for the site.

### **Condition 9**

Cycling facilities shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first occupation of any dwelling.

### **Condition 12**

Electric vehicle charging points to be provided in accordance with a scheme to be approved by the Local Planning Authority and the vehicle charging points to be provided in accordance with the approved plan, prior to first occupation of any residential unit.

### **Condition 13**

Prior to the commencement of development on site, a method statement shall be submitted to the Local Planning Authority for written approval which shall include the following:

- i. the parking of vehicles of site-operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development



- iv. the erection and maintenance of security hoardings including decorative displays, where appropriate
- v. wheel-washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. details of working hours

### **Relevant Planning History**

21/0154/FUL: Full: Erection of 2no. semi-detached bungalows and 2no. semi-detached two storey dwellings, with associated parking and landscaping.  
Refused

22/0001/AP/REFUSE: Full: Erection of 2no. semi-detached bungalows and 2no. semi-detached two storey dwellings, with associated parking and landscaping.  
Appeal Allowed

### **Consultee Response**

#### **United Utilities**

Further to our review of the submitted documents, Building Regulations Site Plan (showing drainage, Drawing No. 5131-BR01, Rev A- Dated 09/01/23 & the Planning Conditions document dated November 2022, United Utilities recommends that condition 4 is not discharged. This is because in accordance with the drainage hierarchy, surface water should be discharging to the surface water sewer to the south east of the site. The surface water should also discharge at a restricted discharge rate in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) as requested in the condition. The condition also asked for infiltration testing to rule out infiltration possibility for this site, this should be provided if a connection to the combined sewer is proposed. We would also expect that the cover levels of all manhole and FFL are provided so the risk of sewer surcharge can be assessed prior to determining the suitability of the drainage strategy.

A 225mm combined sewer in the rears of the properties should also be show on the drainage drawing with the distance away from the proposed properties

#### **LCC Highways**

This application seeks to discharge the above conditions, only Conditions 9, 12 and 13 of which are highway-related. The Highway Development Control Section makes the following comments.

##### **Condition 9 (cycle facilities)**

Cycling facilities shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first occupation of any dwelling.

Details submitted on the Planning Conditions drawing ref 5131-PC01 are acceptable and the Highway Development Control Section considers that this condition can be discharged, subject to satisfactory implementation.

##### **Condition 12 (Electric car charging points)**

Electric vehicle charging points to be provided in accordance with a scheme to be approved by the Local Planning Authority and the vehicle charging points to be provided in accordance with the approved plan, prior to first occupation of any residential unit.

A photograph of an electric vehicle charging point has been included on drawing 5131-PC01. However, no further details, including specification, have been supplied. To allow this condition to be discharged further information should be provided, including technical specification, demonstrating that the charging points are in line with the Dept for Transport's guidance regarding Electric Vehicle Charging in Residential and Non-residential Buildings. This states that charge points must have a minimum power rating output of 7kW and be fitted with a universal socket that can charge all types of electric vehicles.

Further details submitted on 03/01/2023 – these are satisfactory.

#### Condition 13 (Construction Method Statement)

Prior to the commencement of development on site, a method statement shall be submitted to the Local Planning Authority for written approval which shall include the following:

- i. the parking of vehicles of site-operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoardings including decorative displays, where appropriate
- v. wheel-washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. details of working hours

The Construction Method Statement has been included on Drawing 5131-PC01, including a site layout plan. In the Highway Development Control Section's opinion the information submitted is acceptable, and considers that this condition can be discharged, subject to satisfactory implementation.

Environmental Health – response awaited

### **Public Response**

None necessary.

### **Officer Comments**

This application requests the discharge of condition numbers 3, 4, 5, 6, 9, 12 and 13 on the Planning Permission.

#### **Condition 3**

The applicant has submitted a material schedule including the following:

Walls – Marshalls Cromwell reconstituted stone, colour Buff

K-Rend to blockwork cavity walls – colour Sterling

Cills and Lintels – Forticrete cast stone in colour Buff

Roof – Marley Modern

Fascias and soffits – Grey UPVC colour Anthracite Grey RAL 7016M

Rainwater Goods – Black PVC Colour Black RAL 9017M

Windows & Patio Doors UPVC RAL 7016M

Entrance Doors – Composite Anthracite Grey with a light grey frame RAL 7016

External Paving – Indian Stone colour Buff Multi

Fencing – 1.8m high timber close boarded

These materials are appropriate and this condition can be discharged, subject to implementation.

#### Condition 4

The applicant has submitted information regarding the surface water drainage hierarchy. They state that soakaways are not possible due to the size of the site. They are instead intending to discharge surface water to the combined sewer. However, there would be two separate systems (foul and surface water) which would only connect to the mains foul sewer upon leaving the site. The response from United Utilities indicates that the condition cannot be discharged and infiltration testing has been requested.

#### Condition 5

All windows are to be set back by at least 70mm, this is noted and can be discharged subject to implementation.

#### Condition 6

The applicant has submitted a GroundSure desktop study report, along with a Radon check document. This information will be reviewed by the Council's Environmental Health Officer and is not detailed enough to discharge the condition. A Phase 1 Ground Investigation Report has been requested and is awaited. An update will be provided to Committee.

#### Condition 9

The applicant has submitted a plan drawing 5131 PC01 which details the cycle storage facilities. The details submitted are satisfactory and this condition can be discharged, subject to implementation.

#### Condition 12

Electric Vehicle Charging Points are indicated on drawing 5131 PC01. The details submitted are satisfactory and this condition can be discharged, subject to implementation.

#### Condition 13

A Construction Method Statement has been submitted which is included on plan 5131-PC01. It sets out the operating hours which will be adhered to during the construction phase. It also indicates where site operatives will park, where herras fencing will be erected, where deliveries would be unloaded, the control of dust & dirt, waste removal, and mechanical sweeping.

The details submitted are satisfactory and this condition can be discharged, subject to implementation.

### **Summary**

**Condition 3:** The information submitted is satisfactory and this condition can be discharge, subject to implementation.

**Condition 4:** The information in this case is not detailed enough and this condition cannot be discharged. Further information has been requested from the applicant.

**Condition 5:** This is noted and the condition can be discharged, subject to implementation.

**Condition 6:** A Phase 1 Ground Conditions Investigation is awaited, Members will be updated regarding this prior to the meeting.

**Condition 9:** The information submitted is satisfactory and this condition can be discharge, subject to implementation.

**Condition 12:** The information submitted is satisfactory and this condition can be discharge, subject to implementation.

**Condition 13:** The information submitted is satisfactory and this condition can be discharge, subject to implementation.

**RECOMMENDATION:** Delegated powers are sought to Discharge the Conditions, subject to a satisfactory outcome from statutory consultees.

**Application Ref:** 22/00784/CND

**Proposal:** Approval of Details Reserved by Condition: Discharge of Conditions: Condition 3 (External Materials), Condition 4 (Surface Water), Condition 5 (Window set back), Condition 6 (Contamination), Condition 9 (Cycle facilities), Condition 12 (Electric car charging points), Condition 13 (Construction Method Statement) of Planning Permission 21/0154/FUL.

**At:** Land adjacent to 30 Dixon Street, Barrowford

**On behalf of:** MFH Projects